

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
OREGON DEPARTMENT OF EDUCATION**

IN THE MATTER OF:THE	)	<b>FINAL ORDER of DISMISSAL</b>
EDUCATION OF	)	
	)	OAH Case No. 2020-ABC-03999
<b>BG AND DAVID DOUGLAS</b>	)	Agency Case No. DP 20-117
<b>SCHOOL DISTRICT 40</b>	)	

**HISTORY OF THE CASE**

On September 2, 2020, the Office of Administrative Hearings (OAH) received a Request for Impartial Hearing purportedly filed on behalf of Parent and Student. The request was signed by Peter G. Albert of the Brain Injury Rights Group, Ltd., and by Patrick Donohue of the Patrick Donohue Law Firm. On September 14, 2020, Richard Cohn-Lee, of the Hungerford Law Firm, LLP, filed a Motion for Order to Show Cause, on behalf of the David Douglas School District, requesting that Parent demonstrate that Mr. Albert and/or Mr. Donohue are admitted to practice law in Oregon. Chief Administrative Law Judge (ALJ) John Mann issued a Ruling and Order Granting Motion to Show Cause on September 22, 2020 (Show Cause Order). Parent was ordered to file a response to the OAH no later than 5:00 p.m., Pacific Daylight Time, on September 29, 2020.

**ISSUES**

Whether this case should be dismissed without prejudice.

**FINDINGS OF FACT**

1. On September 2, 2020, the OAH received a request for Impartial Hearing purportedly filed on behalf of Parent and Student. The request was signed by Peter G. Albert and Patrick Donohue.
2. On September 14, 2020, Richard Cohn-Lee, of the Hungerford Law Firm, LLP, filed a Motion for Order to Show Cause, on behalf of the David Douglas School District. In the Motion, Mr. Cohn-Lee asserted that neither Mr. Albert nor Mr. Donohue appeared to be licensed to practice law in Oregon. Mr. Cohn-Lee asked that Parent be ordered to show cause that Mr. Albert and/or Mr. Donohue were licensed Oregon attorneys.
3. On September 15, 2020, Chief ALJ Mann searched the Oregon State Bar member directory website<sup>1</sup> and found that neither Mr. Albert nor Mr. Donohue were listed as licensed Oregon attorneys.

---

<sup>1</sup> [https://www.osbar.org/members/membersearch\\_start.asp](https://www.osbar.org/members/membersearch_start.asp)

4. On September 22, 2020, Chief ALJ Mann issued a Ruling and Order Granting Motion to Show Cause ordering Parent to show cause that Mr. Albert and/or Mr. Donohue were licensed to practice law in Oregon and that the OAH should not dismiss their hearing request. Parent was ordered to file a response to the OAH no later than 5:00 p.m., Pacific Daylight Time, on September 29, 2020.

5. As of September 30, 2020, Parent had not filed the required response and had not provided any evidence to establish that either Mr. Albert or Mr. Donohue were licensed to practice law in Oregon.

### CONCLUSIONS OF LAW

This case should be dismissed without prejudice.

### OPINION

This case is subject to the Oregon Department of Justice’s Model Rules for administrative hearings held before the OAH.<sup>2</sup> OAR 137-003-0550 provides, in relevant part:

(1) Natural persons who are parties in a contested case may represent themselves or may be represented by an attorney or other representative as authorized by federal or state law, including ORS 183.458.

\* \* \* \* \*

(3) Unless otherwise provided by law, an out-of-state attorney may not represent a party to a contested case unless the out-of-state attorney is granted permission to appear in the matter pursuant to Oregon Uniform Trial Court Rule 3.170. Local counsel who obtained the order on behalf of the out-of-state attorney must participate meaningfully in the contested case in which the out-of-state attorney appears.

Nothing in Oregon law authorizes a party to a special education hearing in Oregon to be represented by individuals not licensed to practice law in Oregon. Furthermore, OAR 581-015-2345(1)(c) provides:

A party may not have a hearing until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (1)(a)(B) or (1)(b)(B).

The Request for Impartial Hearing purportedly filed on behalf of Parent and Student was signed by two individuals who do not appear to be licensed to practice law in Oregon. Parent

---

<sup>2</sup> OAR 581-015-2340(2) provides “The Department of Justice’s model rules for administrative hearings, OAR 137-003-0501 through 137-003-0700, apply to the extent consistent with federal law and these division 15 regulations.”

has not provided any evidence to establish that the individuals are authorized to practice law in Oregon. Therefore, the Request for Impartial Hearing did not comply with OAR 581-015-2345(1)(c). Parent is not entitled to a hearing until such time as Parent or a duly-licensed Oregon attorney files a due process hearing request that meets the requirements of Oregon law. This case thus must be dismissed without prejudice.

### **ORDER**

Parent's Request for Impartial Hearing is dismissed without prejudice. Parent may refile a hearing request following this dismissal so long as the request is either filed directly by Parent or by a duly-licensed Oregon attorney.

**John Mann**

---

Chief Administrative Law Judge  
Office of Administrative Hearings

### **APPEAL PROCEDURE**

**NOTICE TO ALL PARTIES:** If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER.**

**ENTERED** at Salem, Oregon this 8th day of October, 2020, with copies mailed to:

Mike Franklin, Oregon Department of Education, Public Services Building, 255 Capitol Street NE, Salem, OR 97310-0203.

**CERTIFICATE OF MAILING**

On October 8, 2020 I mailed the foregoing Final Order in OAH Case No. 2020-ABC-03999 to the following parties.

By: Certified Mail

Parent(s) of Student  
2912 SE 125th Ave  
Portland OR 97236

Peter Albert, Attorney at Law  
Brain Injury Rights Group  
300 E 95th St Ste 130  
New York NY 10128

Ken Richardson, Superintendent  
David Douglas School District 40  
11300 NE Halsey St  
Portland OR 97220

Joel Hungerford, Attorney at Law  
The Hungerford Law LLP  
PO Box 3010  
Oregon City OR 97045

**BY ELECTRONIC MAIL:**

Mike Franklin, Legal Specialist  
Department of Education  
255 Capitol Street NE  
Salem, OR 97310-0203

Lucy M Garcia  
Hearing Coordinator  
Office of Administrative Hearings